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The New York Law School ADVOCATE



Vol. I, No. 2

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October 1982

Media Law Symposium

By Charlie Sanders

The New York Law School Media Law Project will sponsor a seminar entitled "Law and the Musician" on Saturday, October 23 at the school. This is the MLP's first seminar since the very successful "Law and the Performing Artist" program in 1980, which attracted a sell-out crowd and received critical acclaim in several of the area's newspapers.

The list of attorneys and music business personnel who will address the conference is impressive and includes attorney William Krasilovsky, co-author of *This Business of Music*; Sid Bernstein, co-producer of the Off-Broadway show "Lennon" and former booking agent for The Beatles; Stanley Snadowsky, owner of the Botton Line night club; Miles Lourie, the manager of Barry Manilow; Ted Nussbaum, the General Counsel of Atlantic Records; Bob Walters, owner of Power Station, one of America's most popular recording studios; Theodor Zavin, vice-president of BMI; and entertainment attorneys Marty Silfen (Blondie) and Barry Platnick (Joan Jett, Chubby Checker).

For further information, call MLP at 966-3500, ext 839.

DEAN STEPS DOWN

By Christopher Souris

"I wanted to let you know that Don Shapiro will be stepping down as Dean at the end of this academic year on June 30, 1983. He will assume an endowed chair as Joseph Solomon Distinguished Professor of Law."

With those words, John V. Thornton, Chairman of the Board of Trustees of NYLS announced in a letter to alumni the resignation of Dean E. Donald Shapiro. Dean Shapiro will be stepping down after ten years of service.

Rumors have been circulating all semester about a possible move by Dean Shapiro. Chairman Thornton's announcement to alumni on October 7, however, appears to be the first official confirmation. On October 12, the New York Law Journal carried a short article noting the announcement contained in Thornton's letter.

Thornton praised Shapiro as "an outstanding Dean." He noted that during his tenure as Dean, NYLS "has greatly enhanced its educational program, recruited numerous outstanding faculty members, strengthened its physical plant, and developed a student body which compares favorably with those of leading law schools nationwide."

While reviewing the development of the school during his tenure, Dean Shapiro said he was leaving his position content. "In fact," he added, "it has been the most constructive ten years of my life. But enough is enough!" The Dean said he felt that deanships should be of limited duration, and noted that his tenure was the second longest in the school's history.

After stepping down in June, Dean Shapiro plans to take a sabbatical for a year, after which he said he intended "to return and occupy the Solomon chair."

A search committee will be formed to select a successor.



LEGAL METHODS: FAVORABLE RESPONSE

By John Schuler

Most students would be surprised to hear it but there are guinea pigs in the hallways and classrooms of NYLS.

Guinea pigs? That's right, guinea pigs. The class of 1985 is the first class to use a revised first year curriculum. Torts, Civil Procedure and Property have been cut to one semester, Legal Research and Writing has been extended to two semesters, and there is a new course called Legal Methods.

All this fussing with the tried-and-true first year curriculum is designed to give students a map to find their way through the first year maze.

Has it worked, at least as far as the guinea pigs are concerned?

"This is really like spoon feeding knowledge to us," says first year student Fran Civardi about the new Legal Methods course, "but it's a very welcome spoon feeding."

"Legal methods has been very helpful. In the beginning you just don't know what you're supposed to do," said Nancy Butler as she waited for her Torts class to begin. "it's made it a lot easier to start the other courses."

Legal Methods is designed to introduce the study of law to first year students. Everything from briefing, to differences between dicta and holding, to statutory interpretations are introduced in much the same way they would be in any other law class. In Legal Methods, however, it is the processes themselves that are being studied, not a particular subject.

With a little basic knowledge behind them, first year students will be able to master Torts, Civil Procedure, and Property in one semester.

"You hear all sorts of horror stories from upperclassmen about first year," said Chris Sobkowski, "but with the Legal Method course, I feel as if I have a better understanding of what's going on."

"Going into law school is a lot like jumping into the water, and Legal Methods gives you a life preserver to hang onto," said Steve Grossman.

"It's an excellent idea," said Jim Cavanagh looking over his notes before class, "but after all those classes the first week, you do get a little tired of it. Still, I would recommend it for next year," he added.

This year, Legal Methods was taught
continued on page 10

Aid Money Grows with Hard Times

By Karen Schwartz

This year NYLS will award three-quarters of a million dollars in grants-in-aid and scholarships to 35% of the student body. Last year 25% of the students received half a million dollars. In the history of NYLS this is the largest sum ever awarded, as well as the greatest year to year increase in aid.

Financial aid has finally come out of the closet. Just a few years ago students were almost embarrassed about asking for financial assistance. Joan Fishman, Director of Financial Aid at NYLS, remembers students sneaking sheepishly into her office. Now they are waiting in line.

"We are receiving more requests for financial aid than ever before. With the cost of legal education and living in New York multiplying each year, students have been forced to be aware of and concerned about their finances out of pure necessity," says Ms. Fishman.

Grants-in-aid

Students today are desperately de-

pendent upon federal and state loan and work-study monies. In an effort to meet students' increasing financial needs, financial aid is now a top priority of the NYLS administration. According to Dean Arnold Graham, Vice Dean for Finance, "We are seeking and have been successful in obtaining endowments from outside sources for the purpose of giving additional scholarships and grants-in-aid." Consequently, much of the financial assistance NYLS students are receiving comes directly from the school's own resources.

"Grants-in-aid are determined strictly upon a student's need," explains Ms. Fishman, who handles all first year financial aid applications. "In this years class, practically everyone who demonstrated a financial need got some money," she says. Each year students must reapply for a grant, and once again decisions are based on need. "Students should remember," she cautions, "there is no guaranteed money. The grant will be awarded again the next year only if the need continues. And even when aid has been denied one year, if the need changes

and increases in subsequent years, money may still be available."

Need is ascertained on the basis of students' and parents' financial situations. "We are requesting information about every parent's ability to afford tuition, de-

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Legislative Update:

Albany Beat

By Drew Britcher

This month's update will focus on the actions that were taken by the N.Y. State Legislature during its most recent session, which closed this past July.

STUDENT LOANS: All New York income taxpayers who have taken student loans administered by New York State should be aware of a new law which allows the Department of Taxation to withhold any overpaid income taxes (better known as your refund) to pay a defaulted student loan. The law requires that notice be served and establishes a right to a hearing prior to any action taken. The law provides added incentive to keep track of your status with regard to student loans, whether they be graduate or undergraduate.

BANKRUPTCY: New York has added Article 11-A to the Debtor and Creditor Law and has established a set of bankruptcy exemptions for New York residents which were separated from those provided in the Federal Bankruptcy Code. The New York exemptions are considerably more restrictive than those in the Federal Code and are too numerous to enumerate here. This type of "opting out" of the Federal Bankruptcy Code has been the subject of several court cases which have questioned the constitutionality of such state action.

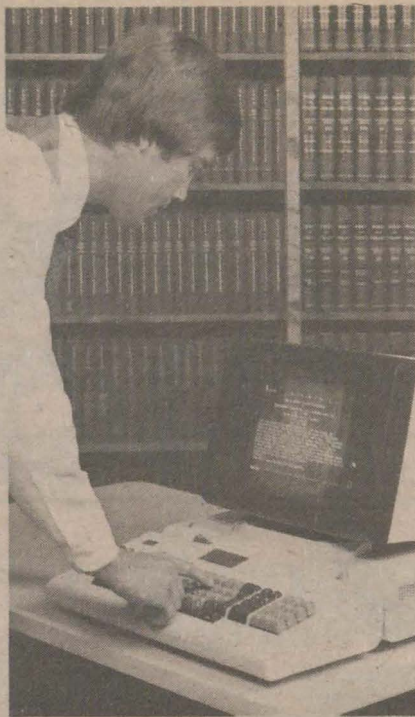
FAMILY LAW: The human leucocyte antigen blood test, which has previously been admissible only as evidence that paternity did not exist, will now be considered admissible as affirmative proof of paternity.

HOUSING: A new condominium and cooperative conversion law, applicable within New York City, has raised to 51 percent the number of tenants who must have executed and delivered purchase agreements in order to permit an eviction plan to be declared.

In holdover actions brought by a landlord against a tenant for a breach of a lease provision, a judge shall now issue, after judgment, a 10 day stay on the issuance of a warrant for eviction in order to allow the tenant to correct the breach and thus avoid eviction.

Article 7-A of the Real Property Actions and Proceedings Law was amended to add "harassment by the landlord or his/her agents" to the list of circumstances which permit the appointment of a court administrator to remedy conditions dangerous to life, health or safety.

Legislative Update is a new column in the ADVOCATE and will appear each month. It is designed to provide an awareness of the actions of both the N.Y. State Legislature and the U.S. Congress which may affect law students, both as future practitioners of the law or as present professional school students.



WESTLAW Arrives

New York Law School will soon have access to WESTLAW, a computerized legal research system. The telephone company is the only obstacle to installation but it has promised a phone line hook-up by mid-October. The WESTLAW machine is in place in what is now known as the Computer Room on the first floor of the Library near the Circulation desk.

The West Publishing Company started WESTLAW about 10 years ago. WESTLAW has practically caught up in popularity and data base to the well established LEXIS system of Mead Data Company. WESTLAW works on the same principle as LEXIS; search terms retrieve cases which are displayed on a video display terminal. However, WESTLAW incorporates the West system of key numbers and digest topics as search terms. In addition to full text retrieval of cases, WESTLAW features retrieval of the West system case synopses, headnotes, and digest classifications, giving great case-finding potential.

Time restrictions will apply to the use of WESTLAW because of the educational-type of contract between NYLS and West Publishing Company. WESTLAW will not be available for student or faculty use during 1:30 to 4:30 p.m. Training sessions on WESTLAW will be announced once the system is in complete working order.

News Briefs

Competition Results

The winners of the writing competition sponsored by the school's three journals were announced on September 13. Each year some of the positions on the Law Review, International Law Journal, and Human Rights are available to winners of the competition. Entrants write an analysis of a recent U.S. Supreme Court case based on a package of selected resource material provided by the editors.

The competition regularly attracts many students who aspire to be journal members. This year, 219 students purchased the competition package. But by the end of the two week writing period, each journal received fewer than 90 submissions each.

This year the journal editors were criticized for selecting a topic which had been used by students in one of last year's research and writing lab sections as their appellate brief topic. (The ADVOCATE, September 1982). The editors of Law Review and International Law Journal, however, report that none of the contestants selected by those journals had been in that lab section. An editor of Human Rights was unaware of any winners who had been in the lab section.

The following is a list of the winning entrants.

LAW REVIEW: Patricia Duffy, Frank Fields, Elizabeth Joslin, Roberta Korus, Elizabeth Lesser, Carol Santangelo, and Marie-Elena Ruffo.

INTERNATIONAL LAW JOURNAL: David Berger, Karen Ford, Brenda Harms, Mario Savio, Adam Simms, and Philip West.

HUMAN RIGHTS: Winifred Cohen, Richard Desanetis, Anthony Fonseca, Jeffrey Friedman, Mark Jaufman, Jamie Karson, David Michael, Gregory Miller, Kira

Osarczuk, Joanne Robinson, James Sandnes, Bradley Schulz, Winthrop Smith, Lebbie Steinberg, and Albert Tolero.

Up in Smoke

The student organization offices were evacuated at approximately 7:30 pm on Thursday, September 23 due to a fire at the Unsloppy Copy Shop. The fire originated in the store's window display. Apparently, the orange crayon's neon light was too close to a posterboard sign and set it afire. According to the 79 Worth Street guard who was on duty at the time, the sprinkler system in the store was activated and put out the fire. The Fire Department promptly arrived and had to break into the shop to insure that the fire was fully extinguished.

It was business as usual at Unsloppy Copy the next morning. The only casualties of the fire were the video games which temporarily were out of commission due to water damage.

Professor Kibbey to Return

Professor James Kibbey was hospitalized in the early part of this fall semester. He is now home convalescing after a difficult operation and reportedly doing well. Professor Kibbey is expected to resume teaching next semester. Interested students can drop off cards or inquiries at Professor Kibbey's mailbox in the faculty secretary office.

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Small Firms: What Do They Want?

By Guillermo Gleizer

First article in a two-part series on law firm requirements for new associates.

Most government and city agencies have cut back on hiring until it hurts. Large firms are hiring less than ever and the supply of new lawyers keeps growing. So, what can you do?

Consider small and medium size firms. Some of them are growing rapidly and hiring accordingly. The traditional qualities of diligence and excellence are still basic requirements for job candidates. Nonetheless, smaller firms seem to attach a great deal of importance to other characteristics. Steve Hess is a New York Law School alumnus, and a Senior Partner at Simonson, Hess, and Leibowitz, a small and successful firm specializing in negligence and malpractice. Michael Heitner is a Senior associate at Herrick-Weinstein, a medium-size (20 lawyers) general practice firm. In the answers that follow, Hess and Heitner give their opinions of what these other characteristics are.

Q: What does the ideal candidate look like?

Hess: What we look for primarily is intelligence. Since we are constantly in court, our young associate must be able to deal with judges. He or she must be articulate enough.

Heitner: The ideal candidate must have demonstrated, before he or she comes here, ability, and we do look at such factors as grades and other achievements in school. Because they'll be in contact with clients, they must express themselves well orally. They'll have already done written research at a very high level, have imagination and willingness to work hard and that's all. Ah yes, they must have to look and sound like lawyers as well.

Q: Is this specimen easy to find?

Heitner: No, very difficult. As a result, we have not hired as many people as fast as we'd like. Since we are in a buyer's market, so far we didn't have to compromise one characteristic for another.

Hess: We just hired a young graduate from N.Y.L.S. She had worked for us the summer before, so we knew her well. She had a particular knowledge in medicine which we needed, but that was just an added attraction.

Heitner: We are very impressed with someone who spent the summer at a large law firm or at the U.S. Attorney's office, or clerking for a judge. But you can also get good experience at law school working with the Law Review, or researching for a professor.

Q: Do you want an aggressive associate?

Hess: We need someone who is able not to be pushed around by judges or other lawyers, say, to get an adjournment, even if the judge wants to get to trial immediately. We need somebody aggressive enough to hold our client's position.

Heitner: The associate must be able to communicate cogently with a client or a partner. He must be articulate. Aggressive? That's a problem. Some people are so aggressive that they have a chip on their shoulders or they use it as a pose to make you think they are go-getters. We are looking for imaginative people who will pick up a problem and do a bit more than asked for. An aggressive person will do a good job only if he wants to do it.

Q: What do you look for in the interview?

Hess: Personally, aggressive people turn

me off. The candidate must be friendly enough to deal with clients, convincing enough to deal with partners, and strong enough to stand up for the work the client needs done.

Heitner: We initially look to our associates for research and writing of memos, and we want a thorough, meticulous job. Somebody quiet is fine. We have enough stars already. But if his shyness is so extreme that it affects his work, then that's a problem.

Q: How confident does the ideal candidate appear?

Heitner: I have never seen anybody in an interview come across as overconfident. Sometimes, we get turned off by a student who's arrogant and not polite.

Hess: You get a gut reaction if the person will work out or not.

Q: What do you expect from the candidate?

Heitner: We are a very closely knit firm. We look for someone who will enjoy working in it and will grow in this kind of environment, where you are given as much responsibility as you can handle, with very close supervision.

Hess: You don't need specialized knowledge: the firm will train you. A hard worker is someone who is administrative. A small law firm is like a three-ring circus. You have to juggle and balance priorities. We prefer someone independent, with initiative, and able to deal with a crisis [such as] the statute of limitations running out tomorrow on a case.

Q: Do you interview N.Y.L.S. students?

Heitner: Some schools are more selective in their admissions than others, and we like to take advantage of that. As a small firm, we have limited time for interviews. For example, one of our partners teaches at N.Y.U., so we recruit regularly at N.Y.U. We also go to Columbia, Harvard, and Yale, and we have enough good candidates.

Hess: We'll hire second year students when there is work that requires extra attention. If they work out, we like to see them stay on with us. We don't seek NYLS students over any other school. On the other hand, since we are NYLS alumni, we like to see anybody out of the school get a job. We did hire the last two additions through the N.Y.L.S. Placement Office.

Q: Mr. Heitner, what if there is a bright candidate from N.Y.L.S.?

Heitner: In addition to visiting law schools, we read resumes sent to us. . . .

Q: Are you aware that what you are saying will get you 1,000 N.Y.L.S. student resumes?

Heitner: Yes, I am. We receive about 10 resumes a day this time of year. I am a very fast reader. If we like the candidate, we call him for an interview.

Q: What in that resume will catch your eye?

Heitner: Somebody who is in Law Review, or with some particular experience. Recently, we were very impressed with the resume of a fellow who had managed the school's radio station, as a profit-making independent business.

Q: Any last remarks?

Hess: For us, grades are not the determining factor, but . . .

Heitner: A third year student should not be intimidated by the interviewing process. The competition is very strong, but there are many opportunities in New York City and many more outside of the city.

Alien Activists Challenge Exclusion

By Will Hart

"Without free speech and assembly, discussion would be futile; with them discussion affords ordinarily adequate protection against the dissemination of noxious doctrine." These words of Justice Louis Brandeis were quoted in the brief by plaintiffs in the federal district court suit, *Jack v. Haig*. The suit brought by Dr. Homer Jack, (Secretary-General of the World Conference of Religion and Peace) against Secretary of State, Alexander Haig, was filed in response to the denial of visas to some 318 representatives of non-governmental organizations (NGOs) seeking to participate in the United Nations Special Session on Disarmament held in New York in June.

Most of the 318 NGO representatives are members of the Japan Conference Against Atomic and Hydrogen Bombs (Gensuikyo). Gensuikyo's affiliation with the World Peace Council, a Soviet sponsored organization, was the reason given by the Government for the visa denials.

Ever since the 1952 McCarran-Walter Act the U.S. Attorney General has had discretion over whether to deny or grant visas to non-immigrant, communist party members. This strident, anti-communist legislation was softened in its application; for thirty years thousands of waivers have been granted. In 1978 the McGovern Amendment sought further to encourage the Attorney General to waive the right to exclude applicants to whom the McCarran-Walter Act applied by requiring him to notify Congress of visa denials. The McCarran-Walter Act became practically obsolete in practice—until now. Never before has such a large number of applicants been refused admission to the U.S. in one instance.

In 1972 the Supreme Court decided in *Kleindienst v. Mandel* that if the government offers a "facially legitimate and bona fide reason (for denying an alien communist entry), the courts will neither look behind the exercise of that discretion, nor test it by balancing its justification against the First Amendment interest of those who seek personal communication with the applicant." The plaintiffs in *Jack v. Haig* maintain that the Government has not offered a "facially legitimate and bona fide reason" for denying the visa requests and that plaintiff's First Amendment rights are being denied by the absence of opportunity to communicate with the members of Gensuikyo.

The reason given by the Government for denying the applications is that "to allow these Soviet-dominated individuals to participate in (...) unsponsored political activities respecting disarmament is not in the best interests of the U.S." The Government submitted a confidential letter to the court containing "classified material the disclosure of which might result in serious consequences to the national security operations." Judge Pierre Leval of the district court reached a decision without inspecting the confidential letter.

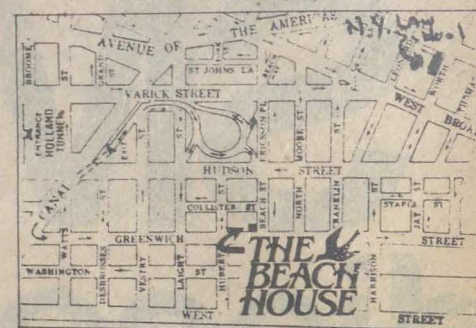
The court held that the reasons given by the Government were sufficient and therefore immune from judicial scrutiny. Thus the visas were denied.

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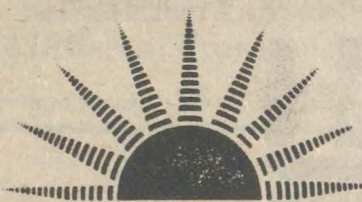


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BRC students had no cause for concern on 3 of the six essay questions on the July 1982 New York Bar Exam, because Joe Marino, Sr., a virtual legend in New York bar review (with over 35 years of experience) thoroughly analyzed the issues that appeared on those questions during the bar review lectures.

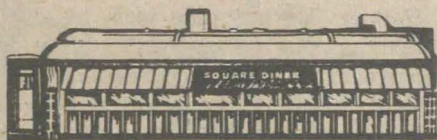
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Editorial

Grading the System

Law schools generally have a reputation for handing down grades in mysterious fashion. It is almost cliché to talk about how one's worst exam resulted in a best grade and vice versa. Many accept this as yet another quirk in legal boot camp where mental trainees are forced to grope for answers until they gain an intuitive understanding of the system they have entered. In the sense that learning law is a process of trial and error, the system is working, and many in charge would "touch nothing." However the system clearly does not work for everyone. Because of the high stakes connected with success in law school, its failure for even a small number of students is unacceptable.

Nancy Klaips, a first year student in the 1981-82 academic year, is presently seeking reinstatement after being removed from the roster for this school year by the Academic Standing Committee. Ms. Klaips believes her less than acceptable performance last year to be the result of arbitrary test scoring on the part of at least two professors and not the result of poor academic performance in any meaningful sense (THE ADVOCATE Sept. 1982).

Ms. Klaips is seeking to make her point by having the exams in question reviewed by a third party to determine if the grades she received were justified. The faculty believes that such a review impinges upon their academic freedom and is, therefore, an unwelcome intrusion into an area where they now have total discretion. However justified the faculty argument may be, it does not address the problem of arbitrary grading. Judging from the response that Ms. Klaips has received from her letter many students at New York Law School feel dissatisfied with the explanations they have received for many of their grades. It is noteworthy that only students receiving failing grades are entitled to an inspection of their exams, though some faculty members are more liberal in applying this policy.

It is understandable that some faculty members are reluctant to subject their grades to review. Such a process could conceivably change the focus from questioning the performance of the student to questioning the performance of the professor. Yet when one bears in mind that the issue is not disciplining faculty but retaining students, such fears should be abated.

It should also be considered that such a review would be kept within the faculty itself. The faculty is not being asked to relinquish its position as the ultimate body bestowing academic standing, but rather to set some minimum standards to avoid injustice to some students, and to police itself in upholding those standards. It may not be possible to eliminate all arbitrariness from exam scores. Grading essay exams is by definition a subjective process, but a review of grades for those students who stand to suffer most from this subjectivity would ensure that the grades they receive reasonably reflect their performance.

The Faculty Committee was scheduled to entertain Ms. Klaip's proposal on September 20th, but has since postponed the date indefinitely. The faculty is strongly urged to consider this matter as soon as possible so that the problems of Ms. Klaips and others, present and future, can reach a proper resolution.



Letters

Unbiased Reporting?

To the Editor:

I would like to congratulate the editors of the ADVOCATE for the impressive inaugural issue. All stages of production were obviously well thought out. It is refreshing to read about something other than what the editor did for his summer vacation (first year students may need this explained).

When the editorial staff of the ADVOCATE was announced it looked to me to be remarkably similar to the editorial staff of COALITION, the newspaper put out by, and appropriately representing the views of LAW, BALLSA, NLG and the Gay student group. I was initially suspicious of the perspective of the ADVOCATE. Of course there is nothing inherently wrong with this group. If these individuals are NYLS's stock of competent journalists then they have every right to be in the positions they occupy. However, the distinct nature of the two publications must be kept in mind.

COALITION was admittedly the mouthpiece of the sponsor organizations. It was entirely within reason to expect it to reflect their views and there was no pretense about it. The ADVOCATE, on the other hand, is not the publication sponsored by those organizations but "New York Law School's newspaper . . . by and for the students, faculty and alumni of New York Law School." It should not replace COALITION as soap-box, but should be unbiased reporting of news relevant to all students of NYLS.

On the whole this is what was delivered to us—with some notable exceptions. First allow me to make clear what it is I find objectionable. It is not the content of the editorial page, nor is it the choice of topics on which articles were written. These are in the exclusive province of the writers and editors. It is the manner in which purported news articles were editorialized. That is the nature of my objection.

In an article on the banning of the Army from on-campus recruiting due to discrimination within the armed forces against gays, Walter Streng comments that the courts, having virtually unanimously upheld discriminatory dismissals, have "disregard[ed] the constitutional protection which theoretically extends to homosexuals" as well as to all others. As I remember learning it, if something is not in

the Constitution and no court has labeled it as a constitutionally protected right then its deprivation is not unconstitutional. While this practice is admittedly discriminatory and could very well be considered intellectually "wrong," it is not unconstitutional. What Mr. Streng was conveying to us, though, is not so much a mistake of fact on his part but his view of this practice as insidious. In his view (and that of many others) the right of homosexuals not to be discriminated against because of their sexual preference is a basic right that certainly must be covered by the Constitution. But that is all it is—his view. Again, this would not be objectionable to me if it was on the editorial page clearly marked as such; it is objectionable since it is passed off in the guise of news.

Another instance of somewhat tilted reporting occurs in Christopher Souris' well written article entitled "Helms Forces Vote on New Right Agenda." While his article deals mostly with a topic that easily lends itself to biased reporting, he mostly gave an unwavering report of the facts. However, his last paragraph describes the active effort by NYLS students to defeat the various anti-abortion amendments and legislation over the past couple of years. He then ended with a passive solicitation for students interested in participating in further efforts, suggesting they contact LAW. No mention was made of any effort on the other side of the issue. If there was none, perhaps that warranted mentioning. And the solicitation, once again, should not have been included in a news article. That is better suited, for example, for an article about LAW's efforts to fight antiabortion measures, not on about legislative action.

Tighter rein need be held over the way the news is presented. Being a paper "by and for" all the students, it should print articles that inform us without prejudice and allow us to make our own decisions. It need be remembered that we do not all think in sync. Those who do have COALITION and any other soap-box publication that arises to expound the views of whatever cause it was created to further, left or right. The rest of us would just like unbiased news.

David S. Neufeld '83

The New York Law School ADVOCATE

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Deep Pocket Running Dry?

By Alice DeVoe

Who really is the Bad Guy in the asbestos litigation?

The disease victims point to the industry. From behind the bankruptcy curtain, the industry says talk to our insurers. The insurers refuse to honor claims and quibble over "manifestation" and "exposure" theories of the asbestos related diseases. Everybody has tried to get the federal government to foot the bill, but the Rich Uncle said "Not this time," and really means it.

Meanwhile, more victims have died and new ones swell the ranks daily. Medical expenses mount and personal lives shatter.

There are over 35,000 current plaintiffs seeking compensation from 250 asbestos companies. Estimates of total liability range from \$50 to \$200 billion.

And all this time no one has fingered the lawyers involved, who have created such a tangled web.

The victims' lawyers have been so zealous—so true to their clients' cause—that they have begun to win punitive damages based on proof of the industry's wanton and wilful disregard of the known hazards of exposure to asbestos fibers.

While many hail the punitive damage theory as one of just punishment and getting the industry where it hurts, this time the Deep Pocket Theory has backfired. It is precisely because of the potential of more punitive damage awards that the industry's lawyers have sought to minimize their clients' liabilities by proceeding into Chapter 11 bankruptcy which effectively freezes pending litigation and bars any new suits, yet leaves the companies free to continue operating.

The insurance companies have done some fast double-talking and developed a potential United States Supreme Court

question concerning an insurer's liability and latent diseases: does liability attach at the time of exposure to the toxic substance or at the time of manifestation of the latent disease some 10 to 20 years after exposure to the toxic?

The courts have applied the law as they see just: they have permitted employees to get around the bar of worker's compensation laws and let them sue their employers with products liability theories. The courts then have held the industry to standards of expert skill and knowledge because of the seemingly undeniable evidence that as early as the 1930's the industry had a sneaking suspicion of the hazards of inhaling asbestos fibers. And if the industry did not know of the hazards, the courts have held that it *should have known* because of the available medical literature at the time. The courts have thus established a standard of behavior to be adhered to by the rest of industrial society.

In the long run, the legal system designed to hear the claims of the victims of asbestos related diseases has been used to their detriment because of all the maneuvering to find ways to legally escape liability, i.e., filing for bankruptcy, inventing new theories of insurance liability, and flatly denying any responsibility to compensate, which has been the Federal Government's ploy. And the victims are left holding nothing but meaningless court papers.

The asbestos litigation should be closely followed because it is establishing standards of behavior for more than just the industry. The question of restitution in the asbestos cases may seem easy because the industry seems to have been caught red-handed. The over-all implication of

who is responsible to guard against the detrimental properties of toxic substances permeates society at large and finding the solution becomes everyone's responsibility.

Development of technology is fast-paced in our society and the unknown detrimental potential of such technology con-

tinues to be a real threat. How is it possible to reasonably test for the unknown? What strange new diseases will rear their malignant heads in the next 20 years? How can technological benefits be balanced against unknown risks?

In addition, the ever-increasing complexity of our legal system might continue to permit intentional maneuvering of clients' claims and forever cloud the immediate issue—compensation of the plaintiff-victims.

Wet Briefs

By Donna Lieberman

A breakdown in communication is being blamed for a recent misunderstanding between NYLS students and the school's administration. The misunderstanding centers around the construction of a new building, the cost of which has been reflected in increased tuition. Some students, apparently believing that the planned building would be functional in size, have been impatiently waiting for construction to begin in the parking lot next to C building.

Confusion could have been avoided if in its press releases the school administration had clearly stated that it was an eighteen by twenty-four inch model of a building that was being contemplated. It has become something of a NYLS tradition to have such a model built of matches every three to four years, and put on display near the faculty dining room. The parking lot next to C building is always closed during the construction period, since Phred, the parking lot attendant, is needed to glue the matches together. When asked why the project required a budget of approximately eight million dollars, Phred explained that

the school was sparing no expense, and had authorized the purchase of the highest quality kitchen matches.



Phred, parking lot attendant and architect explains his plan for design of new building

To the Editor:

The sponsors of the writing competition didn't do their homework when they chose a topic used by a first-year legal research brief. But this failure is minor compared to the intellectual failure of the judges evidenced by their unaccountable prejudice in favor of submissions that did no more than summarize information in the packet. Such an evaluation policy was unfair to the participants who had no reason to disbelieve the instructions which stated that a case comment includes a detailed analysis of the opinion(s).

I asked one of the journal's editor-in-chief if he believed, as I did, that an analysis was something more than a summary. Our beliefs on vocabulary, to this extent, concurred so I asked if he could find an example of something that went beyond mere summary in any of the papers his journal selected. He carefully looked through each page of one such paper and admitted that he couldn't. He also predicted that the same result would ensue from an examination of the other papers chosen. Such candor was unexpected and appreciated, but it did little to make up for two weeks of unnecessary, wasted, and self-defeating effort. Asking for analysis but rewarding summary caused unpardonable discrimination in the competition.

Those who entered previously and learned the hard way that little more than mindless regurgitation was sought, and those who were privy to the prejudices of the judges, held an obvious and unfair advantage. Those who competed after read-

Competition Comments

ing the instructions with the reasonable assumption that the competition was to find students who could intelligently address a legal issue were penalized to the point of exclusion.

If the New York Marathon Committee, which requires that contestants follow a specified course, awarded its prizes to those who hopped on a subway, the Committee would be running their contest like our writing competition.

Staffing on the journals may require more than the legal equivalent of the plumber's apprentice who carries the master's tools and goes for coffee. If such is the case, the competition's evaluation policy should be changed.

Mitchell Berstell '84

To the Editor:

I wish to shed some additional light on the controversy surrounding the journals' writing competition ("Writing Topic Contested," September, p.1).

I was among the "lucky" few who had prior substantive knowledge of *Plyler v. Doe* as a result of my first year brief and oral argument. I briefed and argued for the position of the school district and was strongly persuaded by the merits of its arguments.

A case comment analyses the reasoning of the Court and the precedents it cites. When I first took pen in hand, I realized the obstacles before me and I began to question who the aggrieved parties really were. Had I not had prior exposure to the case, I

certainly would have been as upset as the other students were. But the grass was no greener on my side of the fence.

As Chief Justice Burger notes in his dissent in *Plyler*, 50 U.S.L.W. at 4660 et seq., the *ratio decidendi* of the *Plyler* Court is an inventive convolution of the two-tiered method of equal protection analysis, customized-tailored to remedy a conceded injustice against undocumented alien children. The opinion of the Court flew in the face of *San Antonio School District v. Rodriguez*, 411 U.S. 1 (1973), and is difficult, if not impossible, to reconcile with numerous past holdings of the Court.

I think it is not difficult to see how I might have had a very difficult time objectively analyzing the opinion of the Court. It was in fact very difficult and may have operated to my detriment. I was not selected to join any of the three journals. Perhaps my opinion showed up in too many places; maybe my paper just wasn't any good. All I can say is that it is no advantage—and perhaps a disadvantage—to have to write a comment on a case which the author has argued on the merits.

For this reason, I am in full agreement that the selection of the writing competition topic should be more closely scrutinized in the future.

Donald W. Dickson '84

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Tension lodges in our muscles and joints like a cork in a wine bottle. The shoulders and the neck are especially vulnerable. Yoga pulls the cork by enabling us to let go of the unnecessary tension. While some tension is useful, in that it motivates us to work, uncontrolled tension drains our energy. Yoga throws out the uncontrolled, useless tension. It unites the mind and body, allowing us to concentrate on the task before us.

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'MASTER HAROLD' ...and the boys



Lonny Price, Zakes Mokae, Danny Glover

By Paul Friedman

Throughout the world there are many nations that commit human rights violations but few nations enrage our collective conscience more than those that have institutionalized hatred and racism as a way of life. It is, therefore, always heartening to learn that someone who has grown up in such a society has overcome in his or her own heart the basic immorality that they were brought up to believe in. Athol Fugard is such a man...and more. Indeed, not only has he overcome the values of the society that raised him but he has helped to expose the insidious nature of those values for the world to see in his emotionally wrenching play, "Master Harold" ... and the boys.

Hally, 'Master Harold,' is the fictional lead character of this play, yet in reality he is Athol Fugard as a young boy growing up in the racist nation of South Africa in 1950. As might be expected then, this play is fraught with the same turmoil, joy, optimism, anger and confrontation that faced Mr. Fugard when he was just becoming aware of the world around him in Port Elizabeth, South Africa.

The show opens with Willie, a busboy in Hally's mother's Tea Room (the equivalent of an American coffee house), practicing his dance steps for a 'blacks only' ballroom dancing contest that is only weeks away. Sam the head waiter quite obviously more sophisticated and adept at dancing than his friend Willie, is attempting to coach him but is clearly frustrated by his friend's inability to move gracefully across the 'dance floor.' Clearly though, whatever problems they have in learning to dance, the prospect of the dance contest itself has given both men a renewed spirit and optimism towards their lives.

Sam is an innately intelligent man and very much enjoys the role of teacher to Willie...and Hally, too. In a world that treats him as being less than human, he feels he is making a lasting contribution towards changing the society in which he lives by helping to educate Hally. They discuss many things after school including their joint desire to see a better, more equitable world but rarely do they discuss anything related to the most obvious inequality they see before them.

However, on this day there is an emo-

tional crisis—the return of Hally's crippled, alcoholic father from the hospital—that sets off a daring conversation with powerful overtones. Sam tries, for the first time, to deal with Hally as an equal and not as a black talking to a white or an employee to an employer's son. It sparks for Hally an inner conflict of just where Sam belongs in his life and in society; it is a conflict of immense proportions. The battle that is waged in Hally's conscience between good and evil, between abused power and the dignity of a friend, and between the strength to stand apart from a world that you know is wrong and the weakness that invites you to slip comfortably into a nightmare which masquerades as the truth is, then, what this drama is all about.

Sam, played effortlessly by an exceptionally talented South African-born actor, Zakes Mokae, is a study in optimism. Faced with a world he knows he can't change drastically, he has spent years trying to cultivate his young friend Hally so that he could someday give him the opportunity to make up his own mind about whether or not to become part of the morally tainted world around him. Indeed, it is Sam's strength of character which becomes the probing force in the play. The audience sees in Sam the fatherly figure that we hope will be able to guide Hally through his emotional crisis that springs from his inability to deal with his real father's inadequacies.

Willy, too, is played by a fine actor named Danny Glover. While his character is not central to the action, his ability to blend into the background when necessary and still be deeply involved in the play as it rises to its thrilling climax is invaluable for a play that has no intermission and which does not allow any of its characters to leave the stage until the end.

It is Hally, though, portrayed by Lonnie Price, who makes the evening a complete success. It is through Hally that the audience is truly able to experience the

friendships with Sam and Willie, the torture of living with his parents (related to us entirely through phone conversations), and the moral struggle that is at the heart of this play. Thus, the emotions of the audience are inevitably linked to Hally's reactions to the events in his life. Indeed, these sometimes violent reactions and his eventual decisions make this play the moving experience that it is.

Heineken Strategy Revealed

By Charles Sanders

On Saturday afternoon, September 25th, softball tryouts were held for the New York Law School softball team in Brooklyn's Prospect Park. More than twenty NYLS students (all male) turned out to display their talents on the diamond, hopeful for a chance to participate in the annual East Coast Law School Softball Tournament which will take place in Boston on the weekend of October 9th. Last year, NYLS took third place in the tournament behind Villanova and Boston University. Fifteen other teams participated.

Captain Mark Lab, '84, was candid in his assessment of last year's fine showing. "We were sober for our first game, and we lost. After that, we broke out the beer and never looked back." The team did not lose a game after the initial defeat. "This year, we plan to implement the famous 'Heineken Strategy' immediately," adds co-captain Robert Smith, '83.

Both Lab and Smith agree that this year's team has more talent than last's. Several first year students were impressive in the field at tryouts, most notably third baseman, Dan Kennedy, who displayed acrobatic skills reminiscent of Brooks Whatshisname. The outfielders all have excellent arms. Hitting, however, was erratic due mostly to the unfamiliarity of most of the players to "high arc" pitching. In "high arc," the ball must be lobbed at least ten feet in the air before it reaches home plate within the normal strike zone, and precision timing is needed to hit line drives.

Among the highlights of the tryout session were Ronald Balter's impressive over-the-shoulder catches at second base and Randy Helfman's quick-reflex grab of a lined smash hit back at his cranium by this writer. ADVOCATE Editor-in-Chief Derek Wolman and I each tenaciously proved the old adage that "writers should type and ballplayers should play." Third sacker Kennedy was struck on the noggin' by a bad hop grasscutter, but he remained in the game much to the relief of the coaches, who envisioned law suits at every miscue.

"Although we can only take twelve students with us to Boston" said coach Smith, "we were impressed by everyone, and our decisions were extremely difficult." The following players were selected: Jim Killela (P), Jim Clarity (C), Mark Lab (1B), Brad Schultz (2B), Charlie Norris (SS), Dan Kennedy (3B), Ronald Balter (IF), Mark Ashfelder (IF-OF), Joe LoCicero (OF), John Korja (OF), Bob Smollins (OF), and Bob Smith (OF).

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Legal Methods

continued from page 1

every day for over two hours the first week, twice the second week of classes, and once a week for the rest of the semester. Torts and Civil Procedure began the second week, and contracts and Legal Writing the week after that.

One area where the Legal Methods class got good reviews was in the "practice" test given the fourth week of classes.

"The test was a very good idea. It gave us an idea of what a law school test was like, without having to wait until a final," Oscar Michelen commented, "especially since it didn't count if you did badly."

Shortening Civil Procedure, Torts, and Property to one semester was an idea that drew a mixed reaction.

"It's a good idea as long as the amount of material isn't changed," Michelen said, "but we really don't know how it will affect us yet." However, Laurie Chaskin commented "No, I don't think it's a good idea. There's too much material to cut those courses from two semesters to one."

One aspect of the program that students liked is that the whole curriculum is coordinated:

"The courses are interrelated," Fran Civardi commented. "Things we are doing in Legal Methods are directly applicable to other courses." "It's also made it easier for the professors, because the students all came in at the same point, with the same common background," she added.

What's the verdict? Well, the guinea pigs seem to be happy with the map to their maze so far. It isn't a complete map, but it gives some clues as to where the dead ends are.

SBA

Below is a list of SBA meetings scheduled for this semester. Please be sure to check the bulletin boards in 57 Worth and Gil's for any SBA communications, such as meeting rooms or date changes. Information will also be included in NYLS COUNSELOR. All meetings begin at 5:00 p.m. Agenda items are to be submitted to the SBA by 5:00 p.m. the day prior to the meeting. The SBA office is located at 79 Worth Street, 2nd Floor.

We look forward to seeing you Wednesday, October 13, Thursday, October 21, Tuesday, November 2, Wednesday, November 10, and Thursday, November 18 (SBA end of semester party).

Environmental Law Society

The Environmental Law Society hosted an informal discussion with two attorneys from the Environmental Protection Agency on Sept. 21. Henry Gluckstern and Coles Phinzy are associated with the Water Enforcement branch of the New York Regional Office of EPA. The Water Enforcement branch enforces and implements the Clean Water Act, Marines Wetlands Protection Act, Oil Pollution Prevention and Oil Spills laws as well as some of the Hazardous Waste and Super Fund legislation.

The Clean Water Act provides that no one may discharge waste into a water source unless granted an exception permit as provided by the Act. The Army Corps of Engineers formulates the permits for the dumping after an extensive application process. Any material that is not in natural supply in a water source is considered a waste material.

International Law Society

The International Law Society is one of the most active organizations at NYLS. We have many events scheduled for this year.

On Friday, October 22, we are sponsoring a symposium entitled "Nuclear Arms and World Order." Speakers include Professor Myres McDougal, Father Robert Drinan and Bernard Feld. The Symposium Committee is also planning another conference in the spring on the U.S. Energy Policy and the World Community.

We are very lucky to have Jerome Cohen speak in early November on Chinese law. Also, a group of students are helping to edit articles on The New World Information Order which are from a symposium held here last May. The ILS will publish the articles in book form soon.

The ILS sponsors a team of five for the Jessup Moot Court Competition held in the spring. Two years ago we came in first at the Regional competition. We are very proud of our team this year and look forward to winning the Regional again.

A member of the Society has asked us to sponsor Amnesty International and S.A.V.E. The Society tries to be involved with many aspects in International Law and we are always willing to investigate new ideas.

Stop by our office at 79 Worth Street on the second floor anytime if you are interested in joining or have any questions.

BALLSA

On Wednesday, September 29, 1982, the BALLSA general membership unanimously passed a resolution asking that the school honor Dr. Martin Luther King Jr.'s birthday. The resolution called for the creation of a committee to research the merits of the January 15th holiday, after which a formal presentation would be made to the school. The student body has passed similar resolutions.

This year's cross section of support is unheralded, so the administration will at least have to take note. Dr. King was one of the greatest humanitarians of our time, and it is a sorry reflection on this school for it not to recognize his birthday.

Regardless of the school's position, BALLSA intends to have activities focusing on Dr. King. We feel that the monument is more than the moment. We hope the administration will join us in this resolution. But even if they do not we will still set time aside to share in Dr. King's dream.

To all minority students attending NYLS: The BALLSA Executive Committee wants to bring to your attention Article II, Section I of the BALLSA Association By-Laws: "Membership shall be open to all minority students at New York Law School."

This year's Executive Committee consists of Cornell Edmonds, Chairman; Judy Merritt and Anthony Guerrier, Co-chairpersons; Judy Orario, Treasurer; and Lila Kirton, Secretary. We extend our utmost encouragement to all minority students to join in BALLSA's many activities.

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National Lawyers Guild

Change is a universal concept; it can be applied in almost any conceivable context. Often it occurs beyond the reach of ordinary perception and is only realized after it is an accomplished fact. There are times, however, when we can grasp its significance and gain awareness of the process. The daily experience of our legal education is usually a balance between these levels of consciousness.

The challenge of meeting the demands imposed by a legal education is meant to change us. But this merely raises the questions of how and in what way are we to be changed? Notwithstanding the obvious reply, that it is meant to make us "lawyers," some individuals come to law school with an idea, perhaps a conviction, that they want to be a different kind of lawyer than what the profession has traditionally seen. Women and minority students are especially sensitive to the subordinate position we are all placed in when asked to defend the status quo; an equilibrium which has historically meant less legal protection for them.

While the truth that we must learn The Law as "it is" is emphasized, the technical importance of this is self-evident. Although not given as much "air time" as the traditional approach, the ability to conceive of an alternate, more humane, legal reality is of equal value.

Since 1937, the Lawyers Guild has helped to shape what in the profession is meant by "progressive legal work," involving issues as diverse as New Deal tax and labor legislation, civil rights, anti-war activities, and, currently, fighting Reagan's attacks on the American population. Inundated, as we are, with the work of learning the technical information necessary to practice law, we lose sight of the broad social context which the law effects.

Presently, the economic gains of working and minority people are being undermined, many democratic rights are being withdrawn, and hideous weapons, capable of destroying our entire civilization, are being financed with our taxes. This is being done under the color of law. Are we being taught to be lawyers who will know how to resist these attack?

An example of an opportunity to be exposed to an alternative approach and begin to conceptualize what choices we can make about the future "service" work we can do is the symposium on nuclear arms being held at NYLS. Several of the people speaking at this event believe there is a sound legal basis for criminalizing the man-

ufacture, ownership, and possession of nuclear weapons. It is apparent that something has moved these professionals to be more than "hired guns" because it is clear that theirs is not the well financed position. We, as future lawyers and as residents of this planet, need to give serious consideration to issues such as this.

The NYLS/NLS Chapter plans to organize a number of forums focusing on legal issues of current relevancy. It is our hope that these events will lead to participation by students. Watch for announcements. If you have questions or suggestions please stop by the Guild office, Room 204, at 79 Worth Street. Office hours are posted.

Additionally, the National Executive Board of NLG will sponsor two symposia on Friday, November 11. One symposium will be entitled *ECONOMIC RIGHTS AS CIVIL RIGHTS: The Right To A Job And Economic Security*; the second will be called *REVERSING THE TIDE: Access To Justice*. Preceding these events will be a Labor Skills Seminar on protecting job security, preserving the right to strike and beating union-busting consultants.

Legal Association for Women

NETWORK

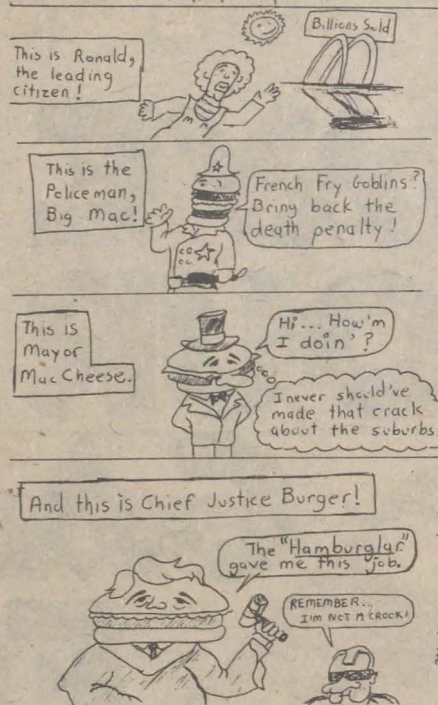
The Legal Association for Women held its first NETWORK on Tuesday, September 21st. Students, faculty, and staff joined in a discussion of the status of women at New York Law School. A focal point of the discussion was the lack of women on the faculty, particularly the adjunct faculty. L.A.W. will be pursuing this issue at upcoming NETWORK meetings, and will be investigating the employment of women faculty at other law schools.

We would like to thank all the staff and faculty who attended this program. NETWORK will be sponsoring programs on a monthly basis.

ABORTION

Last year, L.A.W. spent much of its time working on reproductive rights issues—sending postcards to legislators, lobbying in Washington, and holding a debate on the abortion issue. This year it is gratifying to see that the New Right attempts to pass the Hatch amendment to outlaw abortion, and the more constitutionally suspect Helms bill, which redefines

In McDonald Land...



The CRIMINAL LAW SOCIETY will be holding a panel discussion on "The Life of the Criminal Defense Attorney" on Tuesday, October 19th, at 5:00. All students are invited—watch for signs.

Classifieds Personals

To the brunette in S+M: we looked in each other's eyes—you blushed. Meet me at Gil's to finish the crossword puzzle.

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Rich Shoots: Please shut up in class or I'll cut your tongue out. Fondly, The Ripper.

Some of our best friends our feminists. The J.A.P. Law Society.

Oboy. Some Blanc de la Blanc on the stoop? Be there. Aloha.

Chipwich of the Stars! Get your franchise now! Contact the Pocket Rocket.

2nd Year Beer Party Coming Soon.

Environmental Law Society welcomes new members. Meetings every Tuesday at 5 pm. B-508.

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Keep saving those tax receipts!
April 15th is closer than you think!
Returns prepared by Joel B.

FROM THE NITE DESK: The ADVOCATE staff would like to invite all evening students to contribute to the paper. **FROM THE NITE DESK** will contain articles and observations by and about evening students. Please drop off all contributions in our mail box in the Copy Center or at the office at 79 Worth Street.

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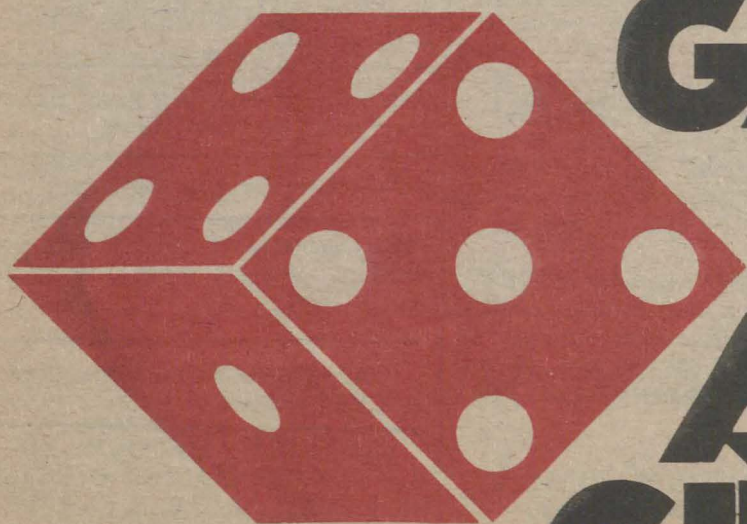
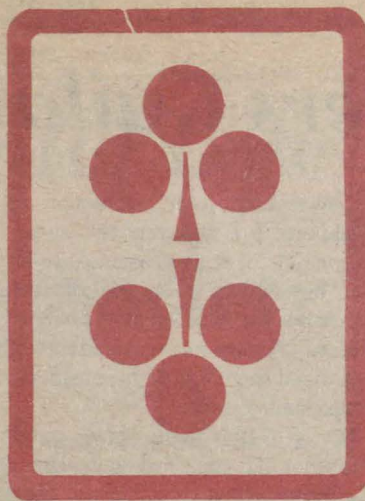
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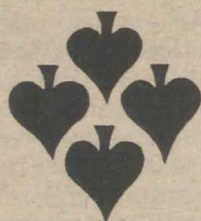
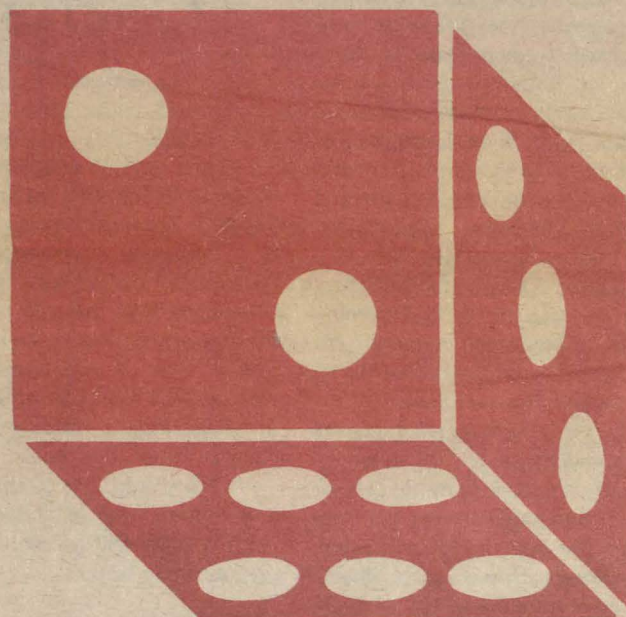
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